

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DALIA GERONIMO

Plaintiff,

v.

CAPITAL ONE BANK,

Defendant,

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Civil Action No. 06-2253(KSH)

REPORT & RECOMMENDATION

This matter having come before the Court at the court-ordered date for the deposition of the plaintiff on October 3, 2006;

and the defendant advising the Court that the Order compelling the plaintiff's appearance was served;

and the defendant advising the Court that the plaintiff did not appear at the deposition;

and the record reflecting that the plaintiff has failed to appear at all court events and has failed to respond to court-orders;

and the record specifically reflecting that the plaintiff failed to appear at the Rule 16 conference on July 26, 2006;

and the record reflecting that the plaintiff failed to respond to the order directing that "no later than **August 31, 2006**, the plaintiff shall submit a letter that shows cause why sanctions should not be imposed for her failure to appear at the conference on July 26, 2006";

and the record reflecting that the defendant served a notice on the plaintiff to take her deposition;

and the deposition being scheduled for August 16, 2006;

and the plaintiff having failed to appear at the deposition on August 16, 2006;

and the Court having entered an Order directing that the plaintiff appear at her deposition on October 3, 2006;

and the Order advising the plaintiff that her failure to appear at the deposition would result in a recommendation to the United States District Judge that the Complaint be dismissed;

and the Court being advised that the defendant served a copy of the Order and a notice for her deposition by personal service on September 21, 2006 and by certified mail/return receipt requested;

and the Court being advised that the plaintiff did not respond to the Order or notice;

and the plaintiff having failed to appear at the deposition on October 3, 2006;

and it appearing that the plaintiff has willfully failed to prosecute this action and has willfully failed to participate in the discovery;

and the Court having been previously advised that plaintiff submitted an Order to the New Jersey Superior Court to dismiss her Complaint after the case was removed to federal court;

and given the plaintiff's failure to appear at the conference on July 26, 2006, failure to appear at her deposition on August 16, 2006 and October 3, 2006, failure to appear at the status conference on September 14, 2006, and her submission of a dismissal order to the Superior Court, the plaintiff appears to have abandoned her suit and no sanction other than dismissal is appropriate, see Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863 (3d Cir. 1984); see also L.L. v. Vineland Bd. of Ed., No. 05-3801, 2006 WL 1113528, *1-2 (3d Cir. 2006); Corron v. Kent General Hosp., 156 Fed. Appx. 498, 499 (3d Cir. 2005) ;

and for the reasons set forth on the record on September 14, 2006 and October 3, 2006;

and for good cause shown,

IT IS ON THIS 3rd day of October, 2006

RECOMMENDED that the United States District Judge dismiss the Complaint with prejudice pursuant to Fed. R. Civ. P. 37 and 41. The Undersigned further recommends that the dismissal of the Complaint not operate as a bar under the entire controversy doctrine a separate complaint by the defendant alleging unlicensed practice of law, abuse of process, tortious interference, and other state law claims arising from the facts set forth in this Complaint and the filing of this action. The parties have ten days to file objections to this recommendation; and

IT IS FURTHER ORDERED that the defendant shall serve a copy of this report and recommendation upon the plaintiff by regular mail and certified mail/return receipt requested.

s/Patty Shwartz

UNITED STATES MAGISTRATE JUDGE